HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 422 OF 2005.

Asif Abdul Ahad Shaikh. ...Petitioner

V/s.

Shri Pratap Dighavkar & Ors. ...Respondents.

Shri Amin Solkar, for petitioner

Shri V.B.Konde-Deshmukh, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 1,2005

P.C. :-

1. Heard the learned counsel for parties.

2. This petition takes exception to the order passed by the Competent Authority dated 27th August, 2004 in exercise of powers under section 56 of the Bombay Police Act externing the petitioner from the specified areas for a period of one year. The petitioner preferred an appeal to challenge the said externment order. That decision has been confirmed by the Appellate Authority by order dated 4th December, 2004.

3. It is unnecessary to burden the judgments with all the factual matrix of the case. Suffice it to

observe that the Competent Authority issued show-cause notice to the petitioner in which made no reference to the chapter proceedings instituted against the petitioner as the basis for the proposed action. However, in the final order which came to be passed after considering explanation of the petitioner, the Competent Authority has made reference to the chapter proceedings instituted against the petitioner. That is impermissible. It clearly impinges upon fairness of the proceedings and denies the petitioner of fair opportunity and of natural justice. Even the appellate authority has placed reliance on the same chapter proceedings referred to by the competent Authority as one of the circumstances against the petitioner.

4. Viewed in this perspective, I find substance in the submission advanced on behalf of the petitioner that the impugned orders are vitiated being based on extraneous consideration to the circumstances mentioned in the show cause notice as was issued to the petitioner under section 59 of the Act.

5. Reliance has been rightly placed on the decision of our High court reported in **1987(3) Bom.C.R. 370 in the case of Namdeo Zipa Desale V/s. M.V.Chitale, Dy. commissioner of Police, Kalyan**.

6. Accordingly, this petition succeeds. Both the orders which are impugned in this petition are set aside.

7. Petition disposed of accordingly.